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NOVARTIS PHARMACEUTICALS  
CORPORATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PLEXXIKON INC.,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS  
CORPORATION,

Defendant.

Case No. 4:17-cv-04405-HSG

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
TO PERMIT DEPOSITION OF  
MALACKOWSKI AFTER THE EXPERT  
DISCOVERY CUTOFF DATE**

Ctrm: 2 – 4th Floor  
Judge: Honorable Haywood S. Gilliam, Jr.

1 Pursuant to Northern District of California Civil Local Rules 6-2 and 7-12, Plaintiff Plexxikon  
2 Inc. (“Plexxikon”) and Defendant Novartis Pharmaceuticals Corporation (“NPC”) stipulate and request  
3 that the Court enter an order permitting the deposition of James E. Malackowski to occur on May 4, 2019  
4 after the May 2, 2019 close of expert discovery. Specifically, the parties have arranged to complete all  
5 other expert depositions within the expert discovery period. The earliest available mutually agreeable  
6 time for Mr. Malackowski, one of NPC’s experts, to be deposed is May 4, 2019. Accordingly, the parties  
7 seek to extend expert discovery for the limited purpose of allowing the parties to complete the deposition  
8 of Mr. Malackowski.

9 On December 22, 2017, the Court issued a scheduling order setting deadlines through claim  
10 construction. *See* ECF No. 57. On June 5, 2018, the parties filed a joint motion to amend the scheduling  
11 order and set a schedule for the remainder of the case. *See* ECF No. 76. The Court issued a revised  
12 scheduling order on June 20, 2018, setting, in relevant part, a fact discovery cutoff date of January 17,  
13 2019, an expert discovery cutoff date of May 2, 2019, and a trial start date of October 7, 2019. *See* ECF  
14 No. 80. This order explained that “[t]hese dates may only be altered by order of the Court and only upon  
15 a showing of good cause.” *Id.* at 1. On January 11, 2019, the parties filed a stipulation and proposed  
16 order seeking to permit the parties to take certain fact depositions on or before February 6, 2019. *See*  
17 ECF No. 117. The Court entered the order on January 14, 2019. *See* ECF No. 118. There have been no  
18 subsequent time modifications in this case, either by stipulation or Court order.

19 Permitting the parties to conduct a single deposition on the aforementioned date will not affect  
20 any of the remaining dates set by the Court’s June 20, 2018 Revised Scheduling Order.<sup>1</sup> Moreover,  
21 good cause exists to take this deposition after the close of expert discovery. The parties have been  
22 working diligently to schedule depositions, but witness and attorney schedules have made it necessary to  
23 schedule this deposition after the May 2, 2019 expert discovery cutoff date. Plexxikon reserves its rights  
24 to seek discovery arising out of Mr. Malackowski’s deposition, and Novartis agrees not to object to  
25 Plexxikon seeking such discovery on the grounds that the deposition took place two days after the  
26 discovery cut-off date.

27  
28 <sup>1</sup> This stipulation does not modify the calculated deadline for submitting dispositive motions,  
which remains June 3, 2019.

1 Dated: April 30, 2019

McDERMOTT WILL & EMERY LLP

2  
3 By: /s/ Thomas P. Steindler  
THOMAS P. STEINDLER

4 Attorney for Defendant  
5 NOVARTIS PHARMACEUTICALS  
6 CORPORATION

7  
8  
9 Dated: April 30, 2019

DURIE TANGRI LLP

10 By: /s/ Daralyn J. Durie  
11 DARALYN J. DURIE

12 Attorney for Plaintiff  
13 PLEXXIKON INC.  
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15  
16 **FILER'S ATTESTATION**

17 Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Thomas P. Steindler, attest that  
18 concurrence in the filing of this document has been obtained.


19 Dated: April 30, 2019

/s/ Thomas P. Steindler  
THOMAS P. STEINDLER

1 ~~PROPOSED~~ ORDER

2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3  
4 Dated: 5/1/2019

5   
6 HON. HAYWOOD S. GILLIAM, JR.  
7 UNITED STATES DISTRICT JUDGE  
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